IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4095 OF 2006

Parashari Gramin Bigarsheti Sahakari
Patsanstha Ltd. ...Applicant

V/s.

Shri. Dilip Kisan Walekar & Anr. ...Respondents

Mr.M.S. Karnik for Applicant.
Mr.Rahul D. Motkari for Respondent No.1.
Mr.Y.S. Shinde APP for the State.

CORAM : V.M. KANADE, J.
DATED : 1st NOVEMBER, 2007.

P.C:-

1. Heard learned counsel for the Applicant and learned counsel for the Respondents.

2. Applicant is challenging the order passed by the JMFC, Pimpalgaon (B) whereby the learned Magistrate was pleased to dismiss the application filed by Applicant U/s.311 of Cr.P.C. seeking permission to call his Accountant as a witness.

3. Brief facts are that a complaint was filed by the Applicant/Complainant U/s.138 of N.I.Act against the Respondent No.1. In the

said case, process was issued and, thereafter, Complainant led his evidence and closed his case by filing a pracipe to that effect. Thereafter, statement of Respondent No.1/Accused was recorded U/s.313 of Cr.P.C and at this stage, an application was filed by the Complainant seeking permission to examine his Accountant on the ground that it was essential to examine this witness for proper decision in order to enable the Court to decide the dispute between the parties. The Trial Court rejected his application primarily on the ground that the Complainant was trying to fill up lacuna in this case and this cannot be permitted by the Court.

4. Learned counsel for the Respondent No.1 submitted that there were no averments in the complaint and as such, ingredients of the offence punishable U/s.138 of N.I.Act were not mentioned in the complaint and, therefore, complaint itself was not maintainable. In support of said submission, he relied on the judgment of the Apex Court in the case of **Kusum Ingots Vs. Pennar Peterson Security Ltd., reported in AIR 2000 SC, 984** and other judgments of the Apex Court.

5. In my view, submissions made by the learned counsel for the Respondent No.1 cannot be accepted. Section 311 of Cr.P.C. vests

discretion in the Trial Court to either recall the witness who is already examined or to issue summons to new witness at any stage of the trial. In the present case, application has been filed by the Applicant for examining his Accountant for the purpose of brining on record books of accounts as maintained by the Complainant. In my view, the Trial Court was not justified in rejecting the application. No prejudice would be caused to the Respondent No.1 since he will be in a position to cross examine the witness. Hence, impugned order is set aside. Application is allowed. The Trial Court shall permit the Complainant to examine his Accountant. The Trial Court to decide the case as expeditiously as possible and in any case, within a period of six months.

. Application is disposed of accordingly.

V.M. KANADE, J.